IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

WP(C).No. 16934 of 2006(N)

PETITIONER:

THOMACHAN.K.KALAPPURA,S/O.THOMAS MATHEW,
KALAPPURAM (H),PO.KAITHAPOYIL,PUDUPPADY,
NOW RESIDING IN 501, 6TH STREET,APARTMENT NO.7D,
BROOKLYN, NEWYORK, U.S.A.,
REPRESENTED BY HIS BROTHER-IN-LAW AND
POWER OF ATTORNEY HOLDER ADV.JOHN MICHAEL,
S/O.MICHAEL,AGED 47 YRS, KOTTARATHIL HOUSE,
35/218-B,BEENA NIVAS, A.R.CAMP ROAD, MARIKUNNU PO,
KOZHIKODE.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS:

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1. **THE BRANCH MANAGER,**
   STATE BANK OF TRAVANCORE,
   BALUSSERY BRANCH, BALUSSERY P.O.
   KOZHIKODE DISTRICT.

2. **THE DISTRICT COLLECTOR,**
   KOZHIKODE.

3. **THE SPECIAL DEPUTY TAHSILDAR,**
   (AREAS COLLECTION) REVENUE RECOVERY,
   KOZHIKODE.

4. **THE VILLAGE OFFICER,**
   PUDUPPADY VILLAGE, KOZHIKODE DISTRICT.

...2/-

KSS

5. STATE OF KERALA, REPRESETNED BY THE
CHIEF SECRETARY TO GOVERNMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

*ADDL.R6 IS IMPLEADED:

R6. M.K.VELAYUDHAN,
RAJALAKSHMY NIVAS,
P.O.KAKKAD, PUTHUPADY,
KOZHIKODE DISTRICT.

(*ADDL.R6 IS IMPLEADED AS PER ORDER DTD. 23/07/2007 IN I.A.1436/07)

BY ADV. SRI.SATHISH NINAN for R1
SRI.SANTHOSH MATHEW
SRI.K.RAMAKUMAR
BY GOVERNMENT PLEADER SRI. BENJAMIN PAUL for R2 to R5

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.16934/2006 N

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE DEMAND NOTICE ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.**

EXT.P2: **COPY OF THE RECEIPT NO.73 DTD. 31/01/96 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER.**

EXT.P3: **COPY OF THE RECEIPT NO.17 DTD. 23/03/96 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER.**

EXT.P4: **COPY OF THE COMMON JUDGMENT IN C.C.NO.28/2000, C.C.NO. 29/2000 AND C.C.NO.30/2000 PASSED BY THE COURT OF THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE, KOZHIKODE.**

EXT.P5: **COPY OF THE NOTICE DTD. 25/05/98 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.**

EXT.P6: **COPY OF THE NOTICE DTD. 11/05/99 SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENTS 1 AND 2.**

EXT.P7: **COPY OF THE LETTER DTD. 14/07/2001 ISSUED BY 1ST RESPONDENT TO THE PETITIONER.**

/TRUE COPY/

P.S.TO JUDGE

KSS

ANTONY DOMINIC, J.

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W.P.(C) No. 16934 OF 2006 N
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Dated this the 6th September, 2007

J U D G M E N T

This writ petition is filed praying to direct the 1st respondent Bank to return document No. 1097/90 of the Sub Registrar's Office, Thamarassery, to the petitioner forthwith and for other consequential reliefs.

2. The facts of the case are that the petitioner had availed of a loan from the 1st respondent-Bank and when default was committed, on a requisition made by the Bank, revenue recovery proceedings were initiated against the petitioner. Ext. P1 is the demand notice that was issued under the Revenue Recovery Act, for recovering an amount of Rs.1,10,737/- together with interest and other collection charges. Following this, petitioner remitted the amount due in terms thereof by Exts. P2 and P3 to the Village Officer, Puthussery Village, the 4th respondent in this writ petition. Later on, the Village Officer got himself impleaded in his personal capacity as additional 6th respondent also.

3. Despite the remittance made by the petitioner as above, it is the common case of parties that the amount was not received by the Bank. The allegation is that the additional 6th respondent misappropriated several amounts including the amount remitted by the petitioner. There was a criminal case against him which ended in his conviction and presently the matter is pending in appeal before this Court. Fact remains that, in so far as the Bank is concerned, even as on date the liability of the petitioner remains undischarged as a result of which the bank has refused to release the title deed mortgaged by the petitioner.

4. Considering the above fact situation this Court passed an interim order dated 6-11-2006 directing the 2nd respondent to see that the amounts collected from the petitioner in revenue recovery proceedings on behalf of the 1st respondent is paid to the 1st respondent-Bank within one week from the date of receipt of a copy of the order. Subsequently, by order dated 31-1-2007, this Court had extended the time and the Govt. Pleader was directed to get instruction from the Government and also from the 2nd respondent as to the limited time within which sanction could be obtained and payment effected to the 1st respondent bank in the account of the petitioner in compliance with the

order dated 6-11-2006.

5. Inspite of this, the bank complains that they are yet to be paid the money and the petitioner complains that he has not been released the documents. Taking note of the above, this Court has also passed an order on 23-7-2007 directing the Govt. Pleader to report as to why the interim orders have not been complied with. It was also ordered that it was up to respondents 2 to 5 to decide as to from whom the amount has to be recovered for payment to the Bank in discharge of the petitioner's liability. On instructions, the learned Govt. Pleader submits that steps have already been taken for recovering the amount from the 6th respondent and on recovery of the same, the amount will be paid to the Bank.

6. Fact remains that the petitioner has paid the amount in full discharge of his liability way back in 1996 and nobody is disputing this aspect. Whatever be the reason, the said amount which has been recovered from the petitioner has not been remitted to the Bank. The amount having been recovered by the Village Officer, 2nd respondent or for that matter the 5th respondent cannot plead helplessness in the matter and they should take responsibility for remittance of the amount to the Bank. This is precisely what has been

ordered by this Court in the interim order dated 6-11-2006. It will not be fair to require the petitioner to wait until the amount is recovered from the 6th respondent and paid to the Bank to get his documents of title released.

7. In view of this, I direct that respondents 2 and 5 shall remit the amount recovered from the Bank as ordered by this Court in the order dated 6-11-2006 to the Bank within 10 days from the date of receipt of a copy of this judgment and on remittance thereof the bank shall release the documents of the petitioner forthwith. Having regard to the fact that the petitioner has discharged his whole liability way back in 1996 I direct that the petitioner will not be made liable for any further amount towards the loan which he had availed of from the 1st respondent-Bank. It is clarified that this order will not stand in the way of respondents 2 and 5 from realising the amount from the additional 6th respondent in accordance with law.

The writ petition is disposed of as above.

ANTONY DOMINIC
JUDGE

jan/-